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Supreme Court, U.S.
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No. 95-1270

In The

Supreme Court of the United States

October Term, 1995

SCOTT P., BY AND THROUGH HIS GUARDIAN BESS P. AND RICHARD E.P.,

Petitioner,

vs.

CARLISLE AREA SCHOOL DISTRICT,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Court of Appeals properly affirm that portion of the District Court's decision which affirmed an administrative review determination that a hearing officer misapplied the least restrictive environment principles of the Individuals with Disabilities Education Act?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Citations	ii
Opinions Below, Jurisdiction, Constitutional Provisions and Statutes Involved	1
Concise Counter-Statement of the Case	2
A. Course of Proceedings and Disposition of the Case Below	2
Reasons for Denying the Writ	3
Conclusion	6

TABLE OF CITATIONS

Cases Cited:

Appeal of Marple Springfield Center, Inc., 654 A.2d 635 (Pa. Cmwlth. 1995)	6
Clement & Muller, Inc. Tax Review Board of City of Philadelphia, 659 A.2d 596 (Pa. Cmwlth. 1995)	6
Doyle v. Arlington County School Board, 953 F.2d 100 (4th Cir. 1991), *on remand*, 806 F. Supp. 1253 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994)	4, 5

Contents

	Page
Gioia v. Unemployment Compensation Board of Review, 661 A.2d 34 (Pa. Cmwlth. 1995)	5
Sabatine v. Zoning Hearing Board of Washington Township, 651 A.2d 649 (Pa. Cmwlth. 1994)	5, 6
Sprague v. Unemployment Compensation Board of Review, 167 Pa. Commonwealth Ct. 184, 647 A.2d 675 (1994)	5
Wilbar Realty, Inc. v. Department of Environmental Resources, 663 A.2d 857 (Pa. Cmwlth. 1995)	6
Statutes Cited:	
20 U.S.C. § 1400, *et seq.*	1
20 U.S.C. § 1415(e)	2
28 U.S.C. § 1331	2

OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioner appealed to the United States Court of Appeals for the Third Circuit from a Memorandum and Order dated August 4, 1994, entered by the Honorable William W. Caldwell, United States District Judge for the Middle District of Pennsylvania (the "District Court"). Respondent filed a cross appeal from the same Memorandum and Order, which affirmed a decision dated March 3, 1993 (the "Panel Decision"), issued by the Special Education Appeals Panel of the Commonwealth of Pennsylvania (the "Appeals Panel"). The Panel Decision held that Carlisle had offered Scott an appropriate non-residential instructional program and had complied with the Individuals with Disabilities Education Act (the "IDEA"), 20 U.S.C. § 1400 *et seq.*, but nonetheless directed Carlisle to provide additional instruction beyond Petitioner Scott P.'s statutory eligibility for education.

The Third Circuit Court of Appeals entered an Order on August 8, 1995, affirming in part and reversing in part the District Court's Memorandum and Order. The Third Circuit Court of Appeals affirmed the Memorandum and Order insofar as it approved the appropriateness of the non-residential program offered by Carlisle. The Third Circuit Court of Appeals reversed the award of additional instruction to Scott.

Respondent submits that this Court is without jurisdiction to review the order in question by writ of certiorari because the question presented by Petitioner is moot, and because the order in question neither concerns conflicting decisions of courts of appeal or state courts nor brings into question the validity of a statute.

CONCISE COUNTER-STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below

Respondent, Carlisle Area School District ("Carlisle") commenced this action on April 2, 1993 in the United States District Court for the Middle District of Pennsylvania against Petitioner, Scott P., by and through his guardian, Bess P. and Richard E.P. Carlisle's Complaint in the Nature of an Appeal from the Special Education Appeals Panel invoked federal question jurisdiction under 28 U.S.C. § 1331 and jurisdiction under the IDEA, 20 U.S.C. § 1415(e). Carlisle alleged that it was aggrieved by the Panel Decision, which ruled that an individualized education program ("IEP") prepared by Carlisle for Scott was appropriate; the Panel Decision also directed Carlisle to provide additional instruction to Scott beyond his twenty-first birthday as a compensatory remedy.

On March 30, 1994, after hearing additional testimony, Judge Caldwell remanded the matter to the Appeals Panel to explain why the Panel had found the program appropriate yet ordered compensatory education. On April 29, 1994, the Appeals Panel filed a Response to the Order Upon Remand, advising that the compensatory education award was grounded on the premise that the program Carlisle had provided Scott in the year prior to the due process hearing was allegedly inappropriate.

On June 8, 1994, the District Court again remanded the matter to the Appeals Panel, requesting it to explain whether Carlisle's IEP was "reasonably calculated to enable the child to receive educational benefits", and to further explain why the Panel ordered modifications to the IEP and compensatory education. On July 6, 1994, the Panel filed a "Clarification of Response to the Order Upon Remand".

On August 4, 1994, the District Court filed a Memorandum and Order affirming the Panel Decision insofar as the IEP was reasonably calculated to enable Scott to achieve educational benefits in the least restrictive environment; the Appeals Panel's award of six months of compensatory education was also affirmed. On August 29, 1994, Petitioner filed an appeal to the Third Circuit Court of Appeals. On September 8, 1994, Carlisle filed a Cross Appeal, challenging the affirmance of the compensatory education aspect of the Panel Decision.

On August 8, 1995, the Third Circuit Court of Appeals entered its Order affirming the IEP's appropriateness. The Third Circuit Court of Appeals also reversed the award of compensatory education on the grounds that the prior year's IEP was not in issue, and that Carlisle had provided an appropriate IEP for Scott for the year in controversy.

REASONS FOR DENYING THE WRIT

Scott's case is moot. He is presently 23 years old and is beyond the statutory age for entitlement to special education programming. In January, 1993, near the mid-point of his penultimate year of public education, Scott's parents unilaterally enrolled him in a private residential school in Baltimore, 100 miles from home. The Third Circuit Court of Appeals decision upholds the disapproval of tuition reimbursement for the unilateral enrollment. Since then, however, Carlisle, in an effort to assist Scott's parents in overcoming what Carlisle believed was a well-intentioned but unwise decision to forego local programming in favor of a faraway residential school, voluntarily provided Scott with supplemental instruction beyond his 21st birthday. Thus, the case should be dismissed for mootness, particularly where, as here, Carlisle has voluntarily provided Scott the functional equivalent of any compensatory remedy he might have obtained with a meritorious case.

There is no conflict between Circuits for this Court to address — the decision of the Third Circuit Court of Appeals below is consistent with what the Fourth Circuit Court of Appeals decided in *Doyle v. Arlington County School Board*, 953 F.2d 100 (4th Cir. 1991), *on remand*, 806 F. Supp. 1253 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (1994).

Contrary to Petitioner's assertions, the hearing officer decision in the case *sub judice* did not turn on "credibility" determinations. Rather, the case turned on mixed questions of law and fact ("Is Scott's program appropriate?"; "Is it carried out in the least restrictive environment?"). The Appeals Panel concluded (as did the District Court and Third Circuit Court of Appeals) that the hearing officer wrongly interpreted the IDEA to favor a restrictive placement on its perceived superior benefit relative to a less restrictive placement. All reviewers above the hearing officer stage correctly applied the IDEA to require placement in the least restrictive environment when appropriate; such a placement was appropriate for Scott.

By superficially calling these questions "credibility determinations," the parents attempt to alter the case to fit the outcome they misinterpret in *Doyle*. Indeed, the Petition for Writ of Certiorari fails to specify any credibility determinations made by the hearing officer or how they were disregarded in the legal analysis made by the Appeals Panel, District Court and Third Circuit Court of Appeals.

Petitioners also mistakenly read *Doyle* as having compelled reversal of the second tier review and affirmance of the hearing officer decision. A closer reading of *Doyle* shows this is not so and that the outcomes of the two cases are in fact quite close. The Fourth Circuit Court of Appeals in *Doyle* remanded for an explanation as to why credibility determinations were not accepted; in essence, the Fourth Circuit, reviewing other

reviewers' due deference, required the district court below to justify the record evidence that caused it to reject the hearing officer's decision. This is harmonious with the standard adopted in the Third Circuit Court of Appeals. Thus the Third Circuit's standard is not in conflict with what was applied by the Fourth Circuit Court of Appeals in *Doyle*.

The parents also erroneously suggest that the *Doyle* decision reversed the administrative and judicial reviewers and compelled affirmance of the hearing officer decision. In fact, the Fourth Circuit remanded, directing the district court to provide a record-based explanation for its rejection of the hearing officer decision, and as a result the hearing officer decision was again repudiated and remained stricken. After *Doyle* was remanded to the United States District Court for the Eastern District of Virginia, the second tier decision was affirmed and the hearing officer decision again reversed. 806 F.2d 1253 (E.D. Va. 1992). That decision was then affirmed by the Fourth Circuit Court of Appeals. 39 F.3d 1176 (4th Cir. 1994). Thus, even *Doyle's* ultimate outcome is virtually the same as in the case *sub judice*.

Although Carlisle contends that findings of fact (credibility based or not) were not modified by the reviewers below, even assuming otherwise is nevertheless consistent with review of administrative decisions. While Petitioner points to the worker's compensation scheme as illustrative of one standard for administrative review, he fails to disclose that the administrative reviewer in Pennsylvania unemployment compensation cases—an equally analogous source of law—makes independent findings on review of a record. *See, e.g., Gioia v. Unemployment Compensation Board of Review,* 661 A.2d 34 (Pa. Cmwlth. 1995); *Sprague v. Unemployment Compensation Board of Review,* 167 Pa. Commonwealth Ct. 184, 647 A.2d 675 (1994). Nor does the Petitioner disclose that numerous other administrative decisions are scrutinized *de novo*

on judicial review. *Cf. Sabatine v. Zoning Hearing Board of Washington Township,* 651 A.2d 649 (Pa. Cmwlth. 1994) (zoning board decision); *Wilbar Realty, Inc. v. Department of Environmental Resources,* 663 A.2d 857 (Pa. Cmwlth. 1995) (Environmental Hearing Board determination); *Clement & Muller, Inc. Tax Review Board of City of Philadelphia,* 659 A.2d 596 (Pa. Cmwlth. 1995) (municipal assessment of business privilege tax); *Appeal of Marple Springfield Center, Inc.,* 654 A.2d 635 (Pa. Cmwlth. 1995) (county assessment for real estate tax purposes).

The Petitioner's case does not raise a substantial question. The case is important to the parties but the issue involved is not substantial and does not affect a public interest. The Third Circuit Court of Appeals decision espouses an elementary principle—that the fact finder's decision is subject to reversal if the fact-finder misapplies the law.

CONCLUSION

The Writ of Certiorari should be denied.

Respectfully submitted,

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